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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

vs.

WALKER RIVER IRRIGATION DISTRICT,
et al.,

Defendants.

IN EQUITY NO. C-125

CASE NO.: 3:73-CV-00125-MMD-WGC

**STIPULATION AND PROPOSED ORDER
FOR WITHDRAWAL OF MOTION FOR
ORDER OF THE COURT DIRECTING CHIEF
DEPUTY WATER COMMISSIONER TO
FULLY ADMINISTER APPROVED
INSTREAM FLOW PERMITS**

The Walker Basin Conservancy (“Conservancy”), United States Board of Water Commissioners/Federal Water Master (“Water Master”), and Walker River Irrigation District (“WRID”), by and through their respective undersigned attorneys, have reached an agreement for withdrawal of the pending Motion of the Walker Basin Conservancy for an Order of the Court Directing the Chief Deputy Water Commissioner to Fully Administer Approved Instream Flows (ECF No. 1734) (the “Motion”).

The United States and Walker River Paiute Tribe, who jointly filed a response in support of the Motion (ECF No. 1738), were notified and consulted in advance of the filing of this Stipulation.

RECITALS

1. On July 1, 2019, the Court entered an Order on a stipulation between the Water Master and the Conservancy (ECF No. 1594) to resolve a Petition for Writ of Mandamus filed by the National Fish and Wildlife Foundation and Conservancy (ECF No. 1560) (the “Mandamus Order”).

2. Pursuant to the Mandamus Order, the Miller Lane near Yerington Gage (the “Miller Lane Gage”), was reactivated and those parties agreed to a plan to fund that Gage.

1 3. That Mandamus Order also provided that at the conclusion of a three irrigation season trial
2 period, the Water Master and the Conservancy would convene a technical analysis to review and analyze
3 the stream flow data generated by the Yerington Weir Gage and the Miller Lane Gage to discuss the
4 hydrologic benefit, necessity, and/or effectiveness of the Yerington Weir Gage and/or Miller Lane Gage,
5 including for administration of the instream flows under the Walker River Decree in the future.

6 4. During that technical review, the Water Master and the Conservancy would also discuss the
7 Water Master's requirement in her November 1, 2018, letter for additional gages between the Yerington
8 Weir and the Wabuska Gage and the continued use of the existing Yerington Weir Gage.

9 5. During the 2022 irrigation season, a dispute arose concerning the Conservancy's
10 previously-approved instream flow water rights with points of non-diversion at the Yerington Weir related
11 to the consumptive use portion of those water rights that the Conservancy expected to be measured at the
12 Wabuska Gage. After attempting to resolve the matter informally with the Water Master, the
13 Conservancy filed the Motion, which seeks, among other things, that the Water Master be ordered to
14 administer sufficient water at the Yerington Weir to satisfy both the senior downstream water right of the
15 Walker River Paiute Tribe and the instream flow water rights of the Conservancy, when in priority. After
16 filing the Motion, the Conservancy, the Water Master, and WRID entered into settlement discussions to
17 attempt to resolve the matters raised in the Motion.

18 6. In effect, settlement discussions related to the Motion have preempted some of the
19 technical analysis of the Miller Lane Gage and Yerington Weir Gage as was contemplated by the
20 Mandamus Order.

21 7. With respect to continued use of the existing Yerington Weir Gage, until such time as there
22 is a gage which measures water directly as it flows through the Yerington Weir, or which measures flows
23 at a more suitable location, the current "Yerington Weir Gage," located approximately 361 feet
24 downstream of the Yerington Weir, will be used for measurement of the Conservancy's changed water
25 rights with a point of non-diversion at the Yerington Weir.

26 8. Discussions related to the Motion have also included challenges with the Miller Lane Gage
27 with respect to administration of instream flows because of its proximity to the Yerington Weir Gage and
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1 its long distance from the Wabuska Gage and the drains (East and Wabuska) which enter the River just
2 upstream of the Wabuska gage.

3 9. Discussions related to the Motion have also included the potential benefit of a gage further
4 downstream than the Miller Lane Gage, at the Railroad Crossing Bridge (the “Railroad Bridge Gage”), as
5 an alternative location from the Miller Lane Gage’s current location.

6 10. The Railroad Bridge Gage will be 11.71 river miles downstream of the Yerington Weir
7 Gage and approximately 1.93 river miles upstream of where the East Drain discharges to the Walker
8 River.

9 11. The Railroad Bridge Gage is expected to provide better information with respect to
10 accretion/depletion in the River between the Yerington Weir Gage and the Railroad Bridge Gage and will
11 also provide better information concerning flows to the Walker River from both the East Drain and the
12 Wabuska Drain.

13 12. For WRID’s Stored Water Leasing Program, WRID developed accounting procedures
14 identified as the Walker River Accounting Tool.

15 13. Instream flow accounting procedures have been developed for the reach of Walker River
16 from the Yerington Weir Gage to the Wabuska Gage, which procedures have been incorporated into the
17 existing Walker River Accounting Tool (“Weir to Wabuska Accounting Procedures”).

18 14. The Weir to Wabuska Accounting Procedures, with information from the new Railroad
19 Bridge Gage, will assist the Water Master in estimating the flow of the Walker River upstream of the East
20 Drain and in estimating the combined flow entering the Walker River from the East Drain and the
21 Wabuska Drain.

22 15. The Weir to Wabuska Accounting Procedures will also provide information as to flows
23 needed at and downstream of the Yerington Weir as measured at the Yerington Weir Gage.

24 16. The Conservancy, the Water Master and WRID have agreed to the addition of the Weir to
25 Wabuska Accounting Procedures to the Walker River Accounting Tool and to the operational principles
26 associated with them, which will become effective beginning on either March 1, 2023 or on the date that
27 the new Railroad Bridge Gage is operational, whichever is later.
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1 17. The parties will have further discussions with regard to requests to the Water Master for
2 information about her daily determination of the priority date for Decreed water rights able to be served
3 during the irrigation season.

4 **STIPULATION**

5 NOW THEREFORE, based upon the foregoing, the parties hereto stipulate and agree as follows:

6 1. The information provided by the Weir to Wabuska Accounting Procedures will be used as
7 set forth above for a period of not less than three full irrigation seasons during which the parties to this
8 Stipulation (and in consultation with other interested parties as needed) will evaluate the use of the Weir to
9 Wabuska Accounting Procedures on an ongoing basis.

10 2. The Yerington Weir Gage and the Railroad Bridge Gage will be paid for by the parties in
11 the same manner as the Miller Lane Gage has been paid for since 2019, and the Miller Lane Gage will no
12 longer be subject to the payment arrangement set forth in the 2019 Mandamus Order, after the Railroad
13 Bridge Gage is operational. If the source of funding does not continue for three full irrigation seasons, the
14 Conservancy will pay for the Railroad Bridge Gage and will also reimburse WRID for expenses it incurs
15 with respect to the use of the Walker River Accounting Tool.

16 3. The Conservancy hereby withdraws the Motion.

17 4. In entering this Stipulation, the parties do not waive any rights or legal positions set forth in
18 their papers filed with this Court related to the Motion and reserve the right to seek further guidance and
19 rulings from the Court with respect to any matter set forth in the Motion, and subsequent filed papers,
20 including during the three-season trial period set forth herein.

21 5. At the conclusion of the three-season trial period, the Water Master, the Conservancy and WRID
22 will convene a technical analysis, at which they are entitled to include any and all representatives of their
23 choosing to review and analyze the effectiveness of the Yerington Weir Gage, the Railroad Bridge Gage
24 and the use of the Weir to Wabuska Accounting Procedures and their continued use in the future.

25 6. Nothing in the Weir to Wabuska Accounting Procedures to the Walker River Accounting
26 Tool or this Stipulation affects the authority of the Chief Deputy Water Master or the U.S. Board of Water
27 Commissioners to administer water rights under the Walker River Decree and to apportion and distribute
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the waters of the Walker River pursuant to the Walker River Decree and the 1953 Rules and Regulations.

7. Based upon this Stipulation, the Conservancy, Water Master and WRID request the Court to vacate the hearing set for February 16, 2023, in the Court's December 27, 2022 Minute Order (ECF No. 1756).

DATED: February 13, 2023.

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By: /s/ Chris Mixson

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DATED: February 13, 2023.

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DATED: February 13, 2023.

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DISTRICT

ORDER

THE STIPULATION IS APPROVED AND IT IS SO ORDERED.

DATED: February 14, 2023



UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2023, a true and correct copy of the foregoing
**STIPULATION AND PROPOSED ORDER FOR WITHDRAWAL OF MOTION FOR ORDER
OF THE COURT DIRECTING CHIEF DEPUTY WATER COMMISSIONER TO FULLY
ADMINISTER APPROVED INSTREAM FLOW PERMITS** was served via the United States District
Court CM/ECF system on all parties or persons requiring notice.

By /s/ Chris Mixson
An Employee of KEMP JONES, LLP